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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,370	07/11/2003	Gary Duclos	24250-509	6739

7590

08/12/2004

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EXAMINER

PATTERSON, MARIE D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/618,370	Applicant(s) DUCLOS, GARY	
	Examiner Marie Patterson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golden (1278140) in view of Stritter (2748406).

Golden shows a shoe comprising a sole (17), a wrapper (18), an upper (12), a wrapper locator (13 and 13a) substantially as claimed except for providing a midsole and outsole and the attachment of the wrapper between the midsole and outsole. Stritter teaches providing a sole formed by a midsole (92) and outsole (70) and attaching a wrapper (46) between the midsole and outsole as an alternative to a single layered sole (72) with a wrapper (44). It would have been obvious to form the sole with a midsole and outsole and to attach the wrapper as taught by Stritter in the shoe of Golden to provide a more durable outsole and to prevent damage to the lower edge of the wrapper.

Golden as modified above discloses the claimed invention except for the exact thicknesses of the materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the thicknesses as claimed in claims 4, 5, 6, and 16, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

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In reference to claim 9, it is well known and conventional to use adhesive to attach elements in a shoe and it would have been obvious to adhesively attach the upper to the locator to hold the elements together prior to stitching to prevent displacement of the elements during manufacture and to provide a more secure connection.

In reference to claim 10, it is well known and conventional to skive the edges of uppers which are stitched to make the materials easier to stitch. It would have been obvious to skive the edge of the upper in Golden as modified above to make the upper easier to stitch.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-14 and 16 above, and further in view of Kee (526234).

Golden as modified above shows a shoe substantially as claimed except for the locator extending around the side of the midsole. Kee teaches extending a locator (c) and wrapper (c') around the side of a midsole. It would have been obvious to extend the locator around the edge of the midsole as taught by Kee in the shoe of Golden as modified above to increase the durability of the edges of the midsole and to make the attachment in this area stronger.

4. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-14 and 16 above, and further in view of either Pavelescu (6088935) or Haimerl (5285546).

Golden as modified above shows a shoe substantially as claimed except for a lining and Strobel attachment of the lining to a strobel board. Pavelescu or Haimerl teaches providing a lining (2 or 216 and 416) which is strobel stitched to a strobel board (4 and

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20 or 210 and 410) interior of an upper (1 or 212 and 412) and a wrapper locator (3' or 212b and 412b) and wrapper (outer edge of 7 or 214a and 414a). It would have been obvious to provide a liner and strobel board as taught by either Pavelescu or Haimerl in the shoe of Golden as modified above to make the shoe more comfortable.

Continued Examination Under 37 CFR 1.114

5. It is noted that applicant states that this application is a continuation of application serial number 09/920538, but this is a typographical error and it appears that it should be 09/920537. It is requested that applicant check and correct this inaccuracy.

1. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9306. (Note that the Examiner **cannot** confirm receipt of faxes) Please identify Examiner ____ of Art Unit ____ at the top of your cover sheet of any correspondence submitted.

Inquiries only concerning the **merits** of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to (703) 308-1337.

Check out our web-site at "www.uspto.gov" for fees and other useful information.



Marie Patterson
Primary Examiner
Art Unit 3728